

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos.134 and 135 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

GUJARAT ALKALIES AND CHEMICALS LTD

Versus

UNION OF INDIA

Appearance:

MR NANAVATI for Petitioners
MR KETAN A DAVE for Respondent No. 1
MS AVANI S MEHTA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/01/98

ORAL JUDGEMENT (Per:C.K.Thaker,J.)

Rule. Ms.Avani S. Mehta appears and waives

service of rule on behalf of respondents. In the facts and circumstances of the case, these two matters have been taken up for final hearing.

.RS 2

#. In both petitions, a short question arises for our determination. In both petitions, orders have been passed by the Assistant Commissioner of Central Excise, Baroda, respondent No.3 which are appealable. It is also undisputed that appeals have been filed before the appellate authority. Along with memorandum of appeals, applications for stay have also been preferred. It is submitted by Mr.Nanavati, learned counsel for the petitioners that though appeals as also stay applications are pending, no orders have been passed on those applications and coercive recovery is sought to be effected against them. They, therefore, submitted that during the pendency of appeals and in any case, during the pendency of stay applications, no coercive recovery could have been effected. For that purpose, reliance was placed on a decision of the Division Bench of this Court in D.C.W Limited and others Vs. Commissioner (Appeals) and others reported in 1997(2) GLR 913. Almost in similar circumstances, a Division Bench to which one of us was a party (C.K.Thakker, J.) held that if the application for stay is pending, no recovery proceedings should be initiated. In our opinion, since the point is concluded by a decision of the Division Bench, both petitions deserve to be allowed and are accordingly allowed. It is directed that the appellate authority will decide the applications for stay as expeditiously as possible, preferably within four weeks from the receipt of writ. Till then, no coercive recovery would be effected against the petitioners. The petitions are accordingly disposed of by making the rule absolute. In the facts and circumstances of the case, no order as to costs.

Sd/-

(C.K.Thakker,J.)

Sd/-

Dt: 20-1-1998 (R.P.Dholakia,J.)
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